

Regular Session, 2012

SENATE BILL NO. 175

BY SENATOR APPEL

MOTOR VEHICLES. Provides relative to unauthorized acts of certain persons regulated by the Louisiana Motor Vehicle Commission. (8/1/12)

AN ACT

To amend and reenact R.S. 32:1268(A)(1)(a)(introductory paragraph) and (c), (2) and (B), and to enact R.S. 32:1261(1)(x), relative to the Louisiana Motor Vehicle Commission; to provide for regulation and enforcement by the commission; to provide for repurchase of certain tools and equipment; to provide for unauthorized actions of certain persons regulated by the commission; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:1268(A)(1)(a)(introductory paragraph) and (c), (2) and (B) are hereby amended and reenacted and R.S. 32:1261(1)(x) is hereby enacted to read as follows:

§1261. Unauthorized acts

It shall be a violation of this Chapter:

(1) For a manufacturer, a distributor, a wholesaler, distributor branch, factory branch, converter or officer, agent, or other representative thereof:

* * *

(x) To charge back, deny vehicle allocation, withhold payments, or take any other adverse actions against a motor vehicle dealer because of a sale of a

new motor vehicle that is exported from the United States, unless it is shown that the dealer knew or reasonably should have known on the date of the sale that the new motor vehicle was to be exported. A motor vehicle dealer shall be rebuttably presumed to have no knowledge of the export if the motor vehicle is sold by the dealer to a resident of the United States who titles and registers the motor vehicle in any state within the United States.

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§1268. Requirements upon termination; penalty; indemnity

A.(1) In the event the licensee ceases to engage in the business of being a motor vehicle, recreational products, or specialty vehicle dealer, or ceases to sell a particular make of motor vehicle, recreational product, or specialty vehicle and after notice to the manufacturer, converter, distributor, or representative by certified mail or commercial delivery service with verification of receipt, within thirty days of the receipt of the notice by the manufacturer, converter, distributor, or representative, the manufacturer, converter, distributor, or representative shall repurchase:

(a) All new motor vehicle, recreational product, and specialty vehicles of the current and last prior model year delivered to the licensee and parts on hand purchased in the ordinary course of business that have not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the licensee. As to recreational products dealers, the repurchase of parts shall be limited to those listed in the manufacturer's price book. The motor vehicle, recreational product, and specialty vehicles and parts shall be repurchased at the cost to the licensee which shall include without limitation freight and advertising costs, less all allowances paid to the dealer, except that new automobiles shall be purchased on the schedule as follows:

* * *

(c) At fair market value, all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased in the ordinary course of business from or

~~purchased~~ at the request of the manufacturer, converter, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear. Fair market value shall be no less than cost of acquisition of special tools and automotive service equipment by the dealer.

* * *

(2) The manufacturer or converter shall make the required repurchase after the dealer terminates his franchise **as follows:**

(a) Within ~~and within~~ thirty days for motor and ~~specialty~~ **specialty** vehicle dealers and sixty days for recreational products dealers of the submission to it, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, of a final inventory of motor vehicles, and parts, **special tools,** **and automotive service equipment** on hand.

(b) For motor vehicle dealers, after tender of the parts and special tools and automotive service equipment to the manufacturer.

B. Failure to make such repurchase without just cause shall subject the manufacturer or converter to a penalty of one and one-half percent per month, or fraction thereof, of the inventory value or returnable recreational product, ~~specialty~~ **specialty** and motor vehicles, and parts, signs, special tools, and automotive service equipment, payable to the dealer, as long as the repurchase is not made.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ducharme.

DIGEST

Appel (SB 175)

Present law provides for the requirements upon termination of a dealer licensee.

Present law requires the repurchase of all new motor vehicles, recreational products, and specialty vehicles of the current and last prior model year delivered to the licensee and parts on hand that have not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the licensee.

Present law requires repurchase at fair market value of all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, converter, distributor, or representative, if the tools and equipment are in

usable and good condition except for reasonable wear and tear. Fair market value shall be no less than cost of acquisition of special tools and automotive service equipment by the dealer.

Proposed law provides that the items to be repurchased were purchased in the ordinary course of business.

Present law requires the manufacturer or converter to make the required repurchase after the dealer terminates his franchise and within 30 days for motor and speciality vehicle dealers and 60 days for recreational products dealers of the submission to it, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, of a final inventory of motor vehicles and parts.

Proposed law changes to present law to require the manufacturer or converter to make the required repurchase after the dealer terminates his franchise as follows:

1. Within 30 days for motor and specialty vehicle dealers and 60 days for recreational products dealers of the submission to it, by certified mail, return receipt requested, or commercial delivery service with verification of receipt, of a final inventory of motor vehicles, and parts, special tools, and automotive service equipment on hand.
2. For motor vehicle dealers, after tender of the parts and special tools and automotive service equipment to the manufacturer.

Present law provides for unauthorized actions of a manufacturer, distributor, wholesaler, distributor branch, factory branch, or converter of motor vehicles, or officer, agent, or other representative thereof.

Proposed law retains present law and prohibits a manufacturer, distributor, wholesaler, distributor branch, factory branch, or converter of motor vehicles, or officer, agent, or other representative thereof from charging back, denying vehicle allocation, withholding payments, or taking any other adverse actions against a motor vehicle dealer because of a sale of a new motor vehicle that is exported from the United States, unless it is shown that the dealer knew or reasonably should have known on the date of the sale that the new motor vehicle was to be exported. A motor vehicle dealer shall be rebuttably presumed to have no knowledge of the export if the motor vehicle is sold by the dealer to a resident of the United States who titles and registers the motor vehicle in any state within the United States.

Effective August 1, 2012.

(Amends R.S. 32:1268(A)(1)(a)(intro para) and (c), (2) and (B); adds R.S. 32:1261(1)(x))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill.

1. Specifies that for repurchase, new motor vehicles, recreational products, specialty vehicles, tools and automotive service equipment owned by the dealer were purchased in the ordinary course of business.
2. Adds that for motor vehicles, the manufacturer or converter shall make the required repurchase after the dealer terminates his franchise and tenders the parts and special tools and automotive service equipment to the manufacturer.